

	Link to Final Agency Decision
	7-1800-20201-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Application of Naomi Campbell for Child Foster Care Licensure	FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION
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This matter was heard by Administrative Law Judge (ALJ) Richard C. Luis at the Hennepin County Human Services Department on February 4, 2009. Michael Q. Lynch, Assistant Hennepin County Attorney, appeared on behalf of the Hennepin County Human Services Department (Local Agency) and the Minnesota Department of Human Services (Department). Naomi Campbell (Appellant, Applicant) appeared on her own behalf. The hearing record closed at the conclusion of the proceedings on February 4, 2009.

STATEMENT OF ISSUE

Whether Naomi Campbell's application for foster care licensure should be denied because of her disqualification from providing services due to Fifth Degree Controlled Substance Possession in 2002 and Offering a Forged Check in 2004?

The Administrative Law Judge concludes that Ms. Campbell's application for foster care licensure should be denied because of the disqualifications imposed for the acts noted in the preceding paragraph, which disqualifications have not been set aside, and for which waivers have not been granted.

Based on the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Sometime in 2007 or early 2008, Naomi Campbell filed an application for licensure to provide child foster care. At the time of her application, as well as at the present time, Ms. Campbell was/is a resident of Hennepin County, so her application was investigated by personnel of the Hennepin County Human Services Department.

2. During the course of the background study investigation conducted by Hennepin County, it was learned that Ms. Campbell was arrested in August of 2002 for the felony possession of crack cocaine (to which she pleaded subsequently to a

misdemeanor) in Dakota County, and that she was convicted in 2005 for a felony of Offering a Forged Check in Scott County in 2004. Under Minn. Stat. § 245C.15, subd. 2, each of these offenses results in a disqualification from direct contact with persons receiving services under the license sought for 15 years.¹

3. By letter of July 31, 2008, the Department notified Ms. Campbell of her disqualification from direct contact with persons served by programs licensed by the Department of Human Services, and of the right to request reconsideration, in connection with the two offenses noted above. A timely request for reconsideration was filed by Ms. Campbell.

4. On November 20, 2008, the Department issued a Notice of Disqualification – Not Set Aside and Order of Denial in connection with Ms. Campbell's request for reconsideration of the 15-year disqualifications for the 2002 Fifth Degree Controlled Substance violation and the 2005 conviction for Offering a Forged Check. The November 20, 2008 Order denied Ms. Campbell's appeal, did not set aside the disqualifications², and did not grant Ms. Campbell a waiver of the disqualifications.³

5. Ms. Campbell filed a timely appeal from the Order noted in the preceding Finding, and this hearing process followed.

6. In addition to the disqualifying criminal acts noted in the preceding Findings, Ms. Campbell's criminal history consists of a long list of minor crimes, principally matters such as disorderly conduct and traffic offenses, as well as Minnesota convictions in 2002, 2003 and 2004 for driving under the influence of alcohol.

7. On July 12, 2006, Ms. Campbell was discharged from her probation in connection with the offense of Fifth Degree Felony Possession of a Controlled Substance, which discharge was granted without an adjudication of guilt.⁴

8. On January 31, 2007, Ms. Campbell was discharged from her probationary period imposed for Offering a Forged Check.⁵

9. Ms. Campbell argues that she is a changed person from the individual who compiled the criminal background noted in the preceding Findings. As further evidence of her rehabilitation, Ms. Campbell introduced her December 11, 2008 appeal letter⁶ and several letters of support.⁷ The letters highlight items such as Ms. Campbell's exemplary service as an Elder and Minister of Music at her church, and her compassionate professionalism in working with disabled, vulnerable people. She has also provided mentoring to persons making the transition from incarceration to release to the community. In her appeal letter, Ms. Campbell notes that she has gone through

¹ Minn. Stat. §§ 245C.14 and 245C15, subd. 2.

² Minn. Stat. § 245C.22, subd. 4(a).

³ Minn. Stat. § 245C.30.

⁴ Ex. 43.

⁵ Ex. 42.

⁶ Ex. 41.

⁷ Exs. 44-49.

chemical dependency treatment, has been sober for five years, and has become involved in a variety of outreach situations to young people. She notes her regret over making the wrong choices earlier in her life⁸, and notes that she does not pose a threat to herself or anyone else.

Based on the Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Human Services have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50 and 245A.08.

2. The Notice of Hearing was proper and the Department has fulfilled all procedural requirements.

3. As a result of her committing acts in violation of Minn. Stat. §§ 152.025 and 609.52, in 2002 and 2004, respectively, Naomi Campbell is disqualified from providing services to persons under a Human Services license for a period of 15 years. Those disqualifications have not been set aside, nor has a waiver been granted in either instance, so Ms. Campbell has the burden to establish by a preponderance of the evidence that she does not pose a risk of harm to any person served under the license for which she has applied.

4. Under Minn. Stat. § 245C.22, subd. 4(b), Naomi Campbell has not met the burden of proof to demonstrate that she does not pose a risk of harm to foster children.

5. It is appropriate to continue to deny Naomi Campbell's foster child care license application because she is unable to demonstrate that granting a child foster care license to her would not present a risk of harm to persons served under such a license.

Based on the Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that the Child Foster Care License Application of Naomi Campbell be **DENIED**.

Dated: March 5th, 2009

/s/ Richard C. Luis

RICHARD C. LUIS
Administrative Law Judge

Reported: Digitally Recorded

⁸ Ms. Campbell, born December 10, 1956, currently is 52 years old. See Ex. 3.

No Transcript Prepared

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Human Services will make the final decision after a review of the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Under Minn. Stat. § 14.61, the Commissioner shall not make a final decision until this Report has been made available to the parties for at least ten days. The parties may file exceptions to this Report and the Commissioner must consider the exceptions in making a final decision. Parties should contact Cal Ludeman, Commissioner of Human Services, Box 64998, St. Paul MN 55155, (651) 431-2907 to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Pursuant to Minn. Stat. § 14.62, subd. 1, the Commissioner is required to serve his final decision upon each party and the Administrative Law Judge by first class mail.

MEMORANDUM

Minn. Stat. § 245C.22, subd. 4(b), provides that in determining whether an individual has met the burden of demonstrating they do not pose a risk of harm, the following factors are to be considered:

- (1) The nature, severity and consequences of the event or events that led to the disqualification;
- (2) Whether there is more than one disqualifying event;
- (3) The age and vulnerability of the victim at the time of the event;
- (4) The harm suffered by the victim;
- (5) The similarity between the victim and persons served by the program;
- (6) The time elapsed without a repeat of the same or similar event;
- (7) Documentation of successful completion by the individual studied of training or rehabilitation pertinent to the event; and

- (8) Any other information relevant to reconsideration.

Under Minn. Stat. § 245C.22, subd 3, any single factor listed above may be determinative of a decision whether to set aside a disqualification. In addition, the statute requires the Commissioner to give preeminent weight to the safety of persons to be served by the license holder, over the interests of the disqualified individual.

The Administrative Law Judge is persuaded that the Local Agency and the Department considered all the information provided in connection with Ms. Campbell's requests for reconsideration in deciding whether she poses a risk of harm to persons that would be served if she is granted a foster care license.

The Administrative Law Judge agrees with the Local Agency and the Department in their determination that primary consideration should be given to the vulnerability of people for whom Ms. Campbell wishes to provide direct contact services – children who are vulnerable because of their young age, to the nature of the two felony level disqualifying incidents, which indicate a pattern of violating the law and imply a higher risk of such behavior in the future, to Ms. Campbell's failure to provide any evidence of rehabilitation for any meaningful period of time since her release from probation on the two felony level charges, and to the three convictions for driving under the influence of alcohol, which point to a pattern of alcohol abuse while driving, which is a risk to any person served by a foster care program.⁹

While Ms. Campbell is to be congratulated for demonstrating in recent years a clean, sober lifestyle, including community service-oriented activity, she has conducted her life in that fashion for only a relatively short period of time. At this juncture, it is too soon to determine with confidence that Ms. Campbell presents no risk of harm to young children, who are the persons who would be served under the child foster care license she seeks.

R. C. L.

⁹ Ex. 1.